

1 KATHERINE F. MURRAY (SB# 211987)
 katherinemurray@paulhastings.com
 2 COURTNEY DETHOMAS (SB#294591)
 courtneydethomas@paulhastings.com
 3 PAUL HASTINGS LLP
 515 South Flower Street, Twenty-Fifth Floor
 4 Los Angeles, CA 90071-2228
 Telephone: 1(213) 683-6000
 5 Facsimile: 1(213) 627-0705

6 Attorneys for Plaintiff
 AVON PRODUCTS, INC.

JS-6

7 Susan E. Barnwell
 8 30234 West Sheila Lane
 Buckeye, AZ 85396
 9 Telephone: 9623) 384-7375
Pro Se Defendant

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

14 AVON PRODUCTS, INC.,
 15 Plaintiff,

16 vs.

17 SUSAN E. BARNWELL; COUNTY
 18 RECORDER OF LOS ANGELES
 COUNTY; SECRETARY OF STATE
 OF CALIFORNIA,

19 Defendants.

CASE NO. 2:15-CV-03046-JFW (ASX)

**CONSENT DECREE AND
[PROPOSED] ORDER**

1 **CONSENT DECREE AND ORDER**

2 1. Plaintiff Avon Products, Inc. (“Avon”) brought this this action seeking
3 to redress the filing of alleged bogus UCC-1 financing statements by Defendant
4 Susan E. Barnwell (“Barnwell”). Avon and Barnwell shall be referred collectively
5 herein as the “Parties.”

6 2. Barnwell was employed by Avon in in Pasadena, California from May
7 3, 1986 through October 1, 2009. During some periods of Barnwell’s employment,
8 Avon processed tax levies from the Internal Revenue Service and the California
9 Franchise Tax Board after Barnwell failed to pay federal and state income taxes.

10 3. On or about February 22, 2006, Barnwell sent Avon a “Memorandum
11 of Law,” wherein she objected to Avon’s garnishment of her wages. As of June 16,
12 2006, Barnwell claimed that Avon had garnished her wages in the amount of
13 \$11,158.83.

14 4. Barnwell also informed Avon that she was serving Avon with a
15 “Notice of Common Law Trademark/Security Agreement,” in which Barnwell
16 stated that the names “Susan Elizabeth Truesdell” and “Susan Elizabeth Truesdell
17 Barnwell,” along with any and all derivatives and variations in the spelling of those
18 names, were trademarked under common law.

19 5. Barnwell subsequently informed Avon that, pursuant to Barnwell’s
20 assertion of her common law trademark in her name, Avon owed Barnwell
21 \$500,000 each time Avon used Barnwell’s name for commercial benefit.

22 6. On or about September 25, 2014, Barnwell sent Avon a letter stating
23 that Avon, along with two former Avon employees, were indebted to Barnwell for
24 \$87,053,490.56 in connection with their purportedly unauthorized use of
25 Barnwell’s name. Barnwell also informed Avon that, on March 7, 2007, she had
26 filed a UCC-1 Financing Statement with the Los Angeles County Recorder’s
27 Office, which the Recorder accepted and recorded. Barnwell further informed
28

1 Avon that she had filed a second UCC Financing Statement with the California
2 Secretary of State. Barnwell also informed Avon that she had heard that Avon was
3 considering selling or was in the process of selling its property located at 2940 East
4 Foothill Boulevard in Pasadena, California. Barnwell demanded that Avon provide
5 her with proceeds from any sale of the Pasadena property, and she threatened to
6 foreclose under her UCC Financing Statement unless Avon made arrangements to
7 pay her the sums Barnwell claimed she was owed.

8 7. Avon filed its Complaint in this action on April 23, 2015, asking the
9 Court to declare null and void any security agreements or other purported contracts
10 that relate in any way to Barnwell's alleged security interest in any of Avon's
11 property. Avon also sought to vacate all UCC financing statements that Barnwell
12 may have filed against Avon with any governmental entity, ordering Barnwell to
13 file all documents necessary to terminate any UCC financing statements filed by
14 Barnwell, and to enjoin Barnwell from filing any future unauthorized or fraudulent
15 security agreements or financing statements seeking to enforce any lien against
16 Avon. Avon also sought statutory damages in the amount of \$500.00 for each of
17 Barnwell's false filings pursuant to UCC Section 9-625(c)(3) (Cal. Com. Code §
18 9625(3)(3)), for monetary damages that Avon may have suffered as a result of
19 Barnwell's clouding of its title, and for attorneys' fees and costs in connection with
20 the filing of this action.

21 8. On or about May 21, 2015, Barnwell filed an Answer to Avon's
22 Complaint, denying each and every allegation in the Complaint and asserting
23 affirmative defenses.

24 9. The Parties have decided to enter into this Consent Decree and Order
25 to resolve this lawsuit without the need for protracted litigation, and agree that this
26 lawsuit shall be finally resolved by entry of this Consent Decree. By entering into
27
28

1 this Consent Decree, Barnwell does not admit liability to the allegations in Avon's
2 Complaint.

3 WHEREFORE, the parties hereby agree and stipulate to the Court's entry of
4 this Consent Decree and Order, which provides as follows:

5 **GENERAL PROVISIONS**

6 10. This Court has jurisdiction over the subject matter and the Parties to
7 this lawsuit. This Court will retain jurisdiction to enforce and interpret the terms of
8 this Consent Decree and Order.

9 11. This Consent Decree and Order is final and binding upon the Parties,
10 their successors and assigns.

11 12. The Parties will each bear its own costs and attorneys' fees in this
12 action.

13 13. Upon entry by the Court of this Consent Decree and Order, the Parties
14 agree to file a Joint Stipulation to Dismiss Action Pursuant to Federal Rule of Civil
15 Procedure 41(a)(1).

16 **INJUNCTIVE RELIEF**

17 14. As part of the resolution of this lawsuit, Avon and Barnwell have
18 entered into a Settlement Agreement and General Release, the terms of which
19 provide that, immediately upon execution of the Settlement Agreement, Barnwell
20 shall file UCC-3 forms in California, Arizona, and anywhere else where she has
21 filed financing statements against Avon, terminating any and all security interests
22 she may have against Avon. Barnwell will email confirmation of those filings to
23 Avon's counsel at katherinemurray@paulhastings.com. Barnwell further agrees to
24 refrain from filing any future liens against Avon anywhere in the world. Barnwell
25 also agrees to refrain from asserting any trademark infringement claims against
26 Avon based on Avon's purported use of Barnwell's name.
27
28

1 15. Avon stipulates that this Consent Decree and Order resolves all
2 matters under the Complaint, including without limitation, all injunctive relief
3 claims brought under the Complaint, and that this Consent Decree and Order also
4 resolves Avon's damages claim asserted in the Complaint.

5 **ENFORCEMENT**

6 16. Should Avon in the future become aware of any facts or conditions
7 suggesting that Barnwell has failed to comply with any of the injunctive relief
8 provisions set forth herein, Avon shall, prior to seeking enforcement from this
9 Court, provide notice to Barnwell in writing, addressed to her current address and
10 any other address Avon may locate for Barnwell at that time. Barnwell shall have
11 thirty (30) days following receipt of such notification to correct the alleged
12 violation(s) and/or respond to Avon's allegations. Any response made by Barnwell
13 shall be in writing, addressed to Avon's counsel, Katherine F. Murray of Paul
14 Hastings LLP, at her then current address registered with the California State Bar.

15 17. If Avon determines, in its own good faith discretion, that the matter(s)
16 are not resolved by Barnwell's response, Avon shall be permitted to file a noticed
17 motion under the current case number of this action, seeking enforcement of this
18 Consent Decree and Order. The prevailing party in such motion proceedings,
19 whether in full or in part, may be entitled to an award of reasonable attorney fees,
20 litigation expenses and costs for such motion.

21 **RELEASES**

22 18. Barnwell agrees to release Avon from any claims of infringement of
23 her alleged common law trademark. Barnwell also knowingly and voluntarily
24 waives and releases all rights and claims, known and unknown, which she may
25 have against Avon, or any of its past, present, or future parents, subsidiaries,
26 affiliated companies or entities (including, but not limited to, affiliated partnerships
27 and joint ventures), predecessors, successors, assigns, partners, officers, trustees,
28

1 directors, managers, employees, and/or attorneys, relating to this action, or which
2 could have been or could be alleged in this action, including but not limited to,
3 Barnwell's employment with Avon, Avon's processing of federal and state tax
4 levies imposed against Barnwell's wages, and Avon's use of Barnwell's alleged
5 trademark.

6 19. Avon knowingly and voluntarily waives and releases all rights and
7 claims, known and unknown, which it may have against Barnwell, or any of her
8 predecessors, successors, assigns, partners, trustees, managers, attorneys, insurers,
9 agents, or representatives relating to this action, or which could have been or could
10 be alleged in this action.

11 20. The Parties acknowledge and agree that they expressly release all
12 rights and claims that they know about, as well as those they may not know about,
13 relating to this lawsuit. The Parties expressly waive all rights under Section 1542
14 of the Civil Code of the State of California or any other comparable statute which
15 may be applicable. Section 1542 reads as follows:

16 "A general release does not extend to claims which the creditor does not
17 know or suspect to exist in his favor at the time of executing the release,
18 which if known by him must have materially affected his settlement with the
19 debtor."

20 **JOINT PREPARATION AND SEVERABILITY**

21 21. This Consent Decree and Order is deemed jointly prepared by the
22 Parties and shall not be strictly construed against any party as its drafter. If any
23 term of this Consent Decree is determined by any court to be unenforceable, the
24 other terms of this Consent Decree shall nonetheless remain in full force and effect.

25 **OWNERSHIP AND NON-ASSIGNMENT OF CLAIMS**

26 22. The signatories to this Consent Decree and Order represent that they
27 are authorized to bind the Parties to this Consent Decree and Order.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXECUTION IN COUNTERPARTS

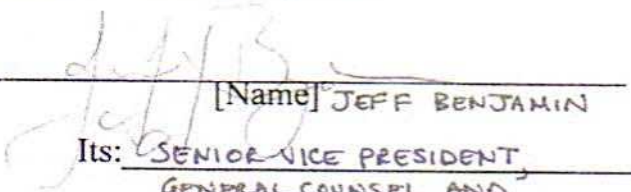
23. This Consent Decree and Order may be executed in counterparts and with separate signature pages. A pdf or facsimile copy of the signature is as valid as the original.

ENTIRE CONSENT DECREE AND ORDER

24. This Consent Decree and Order, along with the Settlement Agreement and General Release, constitute the entire agreement between the Parties, and no other statement, promise, or agreement, either written or oral, made by any of the Parties or agents of any of the Parties, that is not contained in this written Consent Decree and Order or in the Settlement Agreement and General Release, shall be enforceable regarding the matters described herein.

Dated: June 18, 2015

AVON PRODUCTS, INC.

By:  [Name] JEFF BENJAMIN

Its: SENIOR VICE PRESIDENT,
GENERAL COUNSEL AND
CHIEF ETHICS & COMPLIANCE OFFICER

Dated: June 18, 2015

By: Susan E Barnwell

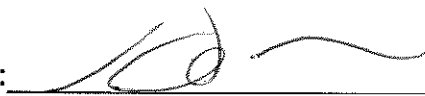
Susan E. Barnwell
Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT:

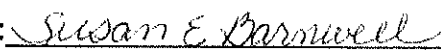
PAUL HASTINGS LLP

Dated: June 30, 2015

By: 

Katherine F. Murray
Attorneys for Avon Products, Inc.

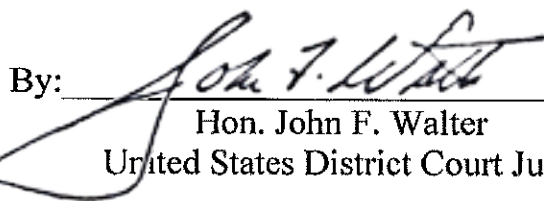
Dated: July 2, 2015

By: 

Susan E. Barnwell
Defendant

IT IS SO ORDERED.

DATED: July 6, 2015

By: 
Hon. John F. Walter
United States District Court Judge